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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th July, 2023

No. 13/1/9978-HII(2)-2023/9639.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 5/2020 dated 24.04.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJIV MALHOTRA S/O SAHIB DAYAL MALHOTRA R/O HOUSE NO. 2376,
SECTOR 38-C, CHANDIGARH-160036 (Workman)

AND

DIEBOLD NIXDROF INDIA (P) LTD. (THROUGH ITS OWNER DIRECTORS PROPRIETORS /MANAGER). ADDRESS (1) : SCO 371-372, 2ND FLOOR, CABIN NO. 6, SECTOR 35-B, CHANDIGARH. ADDRESS (2): 5TH FLOOR, ROLTA TOWER - 1, PLOT NO.39, MIDC MAROL, ANDHERI (E), MIDC, MAROL, ANDHERI (E), MUMBAI - 400093 INDIA (Management)

AWARD

1. Rajiv Malhotra, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the management is an American multi-national financial and retail technology company that deals in the sale, manufacture, installation and service of self-service transaction system (such as ATMs and currency process system), point of sale terminals, physical security products, software and related services for global financial, retail and commercial markets. The workman was appointed on 01.03.1995 by the management and was responsible for the work of service / repair of ATMs and to report the management. Hence, the workman is a 'workman' under Section 2(s) of the Act. The daily timings of the workman was from 09:30 A.M. to 06:00 P.M. weekly off. The work of the workman was controlled, supervised and assessed by the management's Sandeep Gupta - Director Service. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 1,35,642/- as gross salary including incentives & allowances. After deduction of provident fund, income tax, the workman was receiving salary of

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₹ 1,15,620/- per month at the time of his removal by the management. The workman had not been paid his incentive of the year 2018 and bonus of financial year 2016-18. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his service. On 18.10.2018 the management told the workman that his services are no more required by the company and not to come on the duty from the next day and also to resign from service otherwise his services will be terminated. The management illegally, arbitrarily and malafidely terminated the services of the workman all of the sudden without following the mandatory procedure laid down under the provisions of the ID Act. The work on which the workman was deputed is still going on as the work is a regular work of the industry / establishment of the management. While terminating the services of the workman the management has violated the provisions of the ID Act. Neither prior notice was issued nor the workman was paid wages in lieu of notice period. The workman has completed 240 days in the 12 calendar months preceding his termination. Previously, the workman submitted demand notice to the management. Before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, the management submitted its reply on 07.01.2019. Then the Conciliation Officer initiated the conciliation proceedings, which failed. Accordingly, the Conciliation Officer *vide* letter bearing Memo No.169 dated 10.01.2020 advised the workman to refer Section 2-A of the ID Act (Amendment) Act 2010 and accordingly this claim. Prayer is made that the management may be directed to reinstate the workman with continuity of service along with all the benefits to which the workman is entitled under the provisions of law including the full back wages.

2. On notice, the management contested the claim statement by filing written reply on 25.01.2021 wherein preliminary objections are raised on the ground that the written reply is filed on behalf of the management-company through its authorised representative. The present claim statement is a gross abuse of the process of the law and the ID Act. The contents of the claim statement are denied in toto and accordingly, it is liable to be dismissed in *limine*. This Court does not have any territorial jurisdiction to entertain the present claim statement as the last working location of the applicant (herein workman) was at Jaipur, Rajasthan and not in Chandigarh. No cause of action has arisen in the territory jurisdiction of this Court thus the statement of claim is liable to be dismissed being not maintainable. Besides, the applicant does not fall under the definition of the 'workman' as defined under the ID Act. As per Section 2(s) of the ID Act, the definition of the workman does not include a person, who is employed mainly in a managerial or administrative. The applicant was working at the managerial level with the company. Therefore, the present claim statement is not maintainable before this Court. Further, the management company received a demand notice under Section 2-A of the ID Act from the applicant on 28.06.2019 whereby the applicant demanded reinstatement into service with continuity and full back wages and also demand pay pending bonuses of the year 2016-17 and 2017-18. The issues raised in the demand notice are concocted and far-fetched. On 15.07.2019 the management-company sent its reply to the demand notice dated 28.06.2019 and replied to each and every contention / allegation made by the applicant in the said demand notice. It was clarified in the reply that the applicant himself resigned and relieved himself from the services of the management-company. It was further affirmed by the management-company that there remains nothing outstanding on the books of the management-company to be paid to the applicant as alleged or at all. The management-company accepted the resignation of the applicant and relieved him from the services of the company effective from 18.10.2018. The management company received a demand notice dated 17.07.2019 from the Office of Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh for holding a preliminary conciliation meeting to assist the parties for compromise. The management company was directed to appear before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh on 23.07.2019. The management company appeared on 23.07.2019 and on the dates fixed pursuantly i.e. 13.08.2019 and 10.09.2019. However, the matter could not be taken up for hearing on the said dates. On 01.10.2019 the matter was taken up for hearing but the applicant chose not to appear before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh despite being present in his office. The applicant was present along with his Authorised Representative and even had a word with the Representative of the management-company. To the utter shock and surprise of the management-company when the matter was

called the applicant did not appear and just vanished from the office of Learned Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh. The matter was called several times but neither the applicant appeared himself nor through its Authorised Representative before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh. Ultimately, the demand notice was dismissed. The applicant filed an application for restoration of the demand notice stating that the applicant could not attend the case on account of miscommunication. Parties again appeared before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh and it was concluded that conciliation proceedings cannot take place. The applicant deliberately did not attend the hearing. The applicant has some ulterior motives and mala fide intention to cause harassment and prejudice to the management company. The claim statement is not maintainable being filed with *mala fide* intention.

3. Further on merits, it is stated that the fact that the respondent is American multi-national financial and retain technology company is replied being matter of record. It is denied that the applicant was responsible for the work of service / repair of ATMs and to report to the management. The applicant has not approached the Court with clean hands and is misleading this Court. The applicant does not fall under the definition of a 'workman' as defined under the ID Act. The applicant was working at the post of Area Service Manager with the management company at the time of his resignation. The fact that the applicant was working as an Area Service Manager can also be verified from the resignation letter of the applicant. It is denied that the applicant had not been paid his incentives of the year 2018 and bonus of the financial year 2016 to 2018. The applicant be put to strict proof of the same. All the dues have been cleared by the management company at the time when the applicant had resigned from the company. As on date, no amount is due towards the applicant. It is denied that the applicant was told by the management that his services are no more required by the company and that applicant was told not to come on duty from the next day and also to resign from the service otherwise his services will be terminated. The management company never terminated the services of the applicant. It was the applicant who wilfully and voluntarily resigned. The management-company accepted the resignation and relieved the applicant from his duties and his post of Area Sales Manager. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

4. The workman filed rejoinder wherein the contents of the written statement except admitted fact of the claim statement are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues are framed *vide* order dated 09.04.2021:—

1. Whether the services of Shri Rajiv Malhotra were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction to entertain the present claim ? OPR
3. Whether Shri Rajiv Malhotra does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
4. Relief.

6. In evidence, the workman Rajiv Malhotra examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Mark 'A' and Mark 'B'.

Mark 'A' is copy of letter dated 01.04.2018 issued to workman by the Director Human Resources of the management whereby the salary of the workman was revised w.e.f. 01.04.2018.

Mark 'B' is copy of letter dated 12.09.1994 issued by Executive Engineer (Project) PH Division No.1, Chandigarh to the Sub-Divisional Engineer, Chandigarh W/s Sub-Division No.5, Chandigarh relating to Establishment, Chageman, Electrical - Shri Rajiv Malhotra.

On 24.11.2021 the workman closed his evidence.

7. On the other hand, the management examined MW1 Dinesh Sanghari, who tendered his affidavit Exhibit 'MW1/A', along with documents Exhibit 'M1', Mark 'MX', MX1' to 'MX6'.

Exhibit 'M1' is resolution dated 01.09.2022 passed by Board of Directors of the management authorising me to represent the company in the legal proceedings initiated in this court.

Mark 'MX' is copy of reply dated 15.07.2019 to notice dated 28.06.2019.

Mark 'MX1' to Mark 'MX3' is photocopies of postal receipts dated 15.07.2019 and courier receipt dated 15.07.2019 respectively.

Mark 'MX4' is copy of resignation letter dated 09.10.2018 tendered by claimant Rajiv Malhotra to the Regional Service Manager, North.

Mark 'MX5' is copy of letter dated 18.10.2018 whereby the claimant was relieved from services of the company.

Mark 'MX6' is copy of certificate dated 18.10.2018 issued by the management relating to the claimant. On 20.04.2023 Learned Representative for the management closed the evidence.

8. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 3 :

9. Issue No.3 is taken up first as it goes to the root of the case.

10. Onus to prove this issue is on the management. During course of arguments Learned Representative for the management argued that the onus of issue No. 3 is wrongly placed on the management whereas the onus should be placed on the workman, who has alleged in affirmative that he is a 'workman' as defined under Section 2(s) of the ID Act. To my opinion both the parties have availed full opportunity to lead evidence. Since both the parties have led their evidence, thus placing of onus becomes immaterial.

11. Learned Representative for the management argued that the workman Rajiv Malhotra was appointed to the post of Area Sales Manager with the designation of Manager - Supervisor Technical Services. From the designation of the workman it is clearly made out that the workman was discharging managerial and supervisory functions, which falls in exceptions of Section 2(s) of the ID Act. Therefore, the workman is not a 'workman' as defined under Section 2(s) of the ID Act and therefore, no competent to seek any relief under the ID Act before this Court. To support his arguments, Learned Representative for the management referred cross-examination of AW1 wherein he has stated that his designation at the management was Manager - Supervisor Technical Services. AW1 in his cross-examination admitted as correct that he was working with the management as Area Services Manager. Learned Representative for the management referred the judgment of Hon'ble Supreme Court of India bearing Civil Appeal No.1581 of 1994 decided on 08.03.1994 tilted as ***S.K. Maini Versus Carona Sahu Company Limited and Others reported in AIR 1994 SC 1824.***

12. On the other hand, Learned Representative for the workman argued that though the workman was designated as Manager - Supervisory Technical Services but he never performed managerial, supervisory and administrative nature of duties during his tenure. The primary basic and dominant nature of duties of workman was to service / repair of ATMs. Thus, the workman was a 'workman' as defined in Section 2(s) of the ID Act. To my opinion, the issue that the workman falls within the definition of the 'workman' as defined under Section 2(s) of the ID Act or not, cannot be decided on the basis of the designation and salary. The designation of an employee is not of much importance and what is important is the nature of duties performed

by the employee. In the present case, MW1 Dinesh Shangari in his cross-examination stated that in the organisation structure of the company below his designation, there are Territorial Managers (Area Service Managers) and Administrative Staff. The duty of Territorial Manager is to manage the operation of the reporting Engineers under him and manage customer relationship at the local level. MW1 in his cross-examination further stated that duty of the workman is customer relationship and collection of payments. MW1 in his cross-examination stated that about 27-28 Engineers were working under the workman Rajiv Malhotra. MW1 denied the suggestion as wrong that no Engineer was working under the workman. Learned Representative for the workman referred judgment reported in **2006(4) SCT 1 titled as Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah**. To my opinion MW1 for the first time in his cross-examination introduce the plea that about 27-28 Engineers were working under the workman but no person is named who was allegedly working under the workman. There is no evidence of the management to substantiate the oral version of MW1 that about 27-28 Engineers were working under the workman. The law laid down by the Hon'ble Supreme in judgment referred supra **AIR 1994 SC 1824** is well recognised by this Court but the ratio of ruling is not applicable to the facts of the present case because the management failed to prove that the predominant duty of the workman was managerial or supervisory in nature. The judgment referred supra by Learned Representative for the workman reported in **2006(4) SCT 1** is applicable to the facts of the present case to an extent. Hon'ble Supreme Court in para 11 to 13 of the judgment held as below :—

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. **Ananda Bazar Patrika (supra)** was followed by the court in large number of cases."*

In view of the aforesaid judgment the management has failed to prove that the workman had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the workman had authority to sanction leave to any employee. From the discussion made above, it is proved on record that the workman was discharging the duty of customer relationship and collection of payment and therefore falls within the definition of Section 2(s) of the ID Act.

13. Accordingly, this issue is decided against the management and in favour of the workman.

Issue No. 1 :

14. Onus to prove this issue is on the workman.

15. Under this issue Learned Representative for the workman referred testimony of AW1 Rajiv Malhorta, who *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity and in support of his oral version referred documents Mark 'A' and 'Mark 'B'.

16. In order to rebut the evidence of workman, Learned Representative for the management referred the testimony of MW1 Dinesh Shangari, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'M1', Mark 'MX', Mark 'MX/1' to Mark 'MX/6'.

17. From the oral as well as documentary evidence led by the parties, it comes out that there is no dispute between the parties with regard to the fact that the workman has completed 240 days in 12 calendar months preceding his termination. The workman has alleged that his services were terminated on dated 18.10.2018 by the management with its verbal order. On the other hand, the management has taken the plea that the workman wilfully and voluntarily resigned from the service on 09.10.2018 by tendering his resignation, which was accepted by the management *vide* letter dated 18.10.2018 and the workman was relieved from the services of the management company w.e.f. 18.10.2018. The management has placed on record the copy of the resignation letter *vide* Mark 'MX/4' and copy of letter of acceptance of resignation *vide* Mark 'MX/5'. AW1 when put to cross-examination stated that he did not resign from the company rather he was terminated forcefully. He did not have any termination letter. AW1 in his cross-examination denied the suggestion as wrong that he resigned because he found another higher paying job. To my opinion, the version of AW1 that he did not resign from the job and his services were forcible terminated is contrary to the suggestion put to the MW1 in his cross-examination by Learned Representative for the workman. In this regard it is important to refer the suggestion put by the workman to MW1 in his cross-examination wherein MW1 has denied the suggestion as wrong that the working area of the workman was Chandigarh at the time of resignation. The aforesaid suggestion led to the inference that it is own plea of the workman that when he tendered resignation he was working in the area of Chandigarh. Meaning thereby it is the workman, who has tendered his resignation from his services. Once the workman himself tendered the resignation, which is accepted by the management, then the workman is estopped from challenging his termination being illegal.

18. Accordingly, this issue is proved against the workman and in favour of the management.

Issue No. 2 :

19. Onus to prove this issue is on the management-respondent.

20. Learned Representative for the management raised objection that this Court has no territorial jurisdiction to try and decide this case as at the time of tendering resignation the workman was posted at Jaipur

(Rajasthan) and not at Chandigarh. On the other hand, in cross-examination of MW1 the workman has put suggestion to the witness that the working area of the workman was Chandigarh at the time of resignation and this suggestion is denied as wrong by MW1. Thus, the workman has taken the plea that he was lastly posted at Chandigarh. AW1 in his cross-examination stated that he had dual charge of Chandigarh as well as Jaipur (Rajasthan) and this fact has not been controverted by the management in cross-examination of AW1. To my opinion, since the workman had dual charge of Chandigarh (U.T.) and Jaipur (Rajasthan) at the time of his resignation, therefore, the present claim statement is well in the territorial jurisdiction of the present Court / Tribunal.

21. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

22. In the view of foregoing finding on the issue No.1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 24.04.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th July, 2023

No. 13/1/9980-HII(2)-2023/9649.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 120/2021 dated 17.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SUSHILA DEVI, H.NO.624, JANTA COLONY, SECTOR 25, CHANDIGARH. (Workman)

AND

- (1) M/S JAIN ASSOCIATE, H.NO.341, DADU MAJRA COLONY, SECTOR 38 (WEST), CHANDIGARH.
- (2) MANAGING DIRECTOR, SOCIAL WELFARE DEPARTMENT, SECTOR 17, CHANDIGARH. (Management)

AWARD

1. Sushila Devi, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman was appointed by the management of M/s A to Z Services as Cook on 04.06.2015 and was deployed at Nari Niketan, Sector 26, Chandigarh, a unit run by Social Welfare Department, U.T. Chandigarh. The contract of A to Z Services was terminated on 31.03.2016 and new management of M/s Jain Associates took over the contract of manpower supply on outsourcing w.e.f. 01.04.2016. The claimant-workman remained in continuous employment from 04.06.2015 to 31.05.2020 when her services were illegally and wrongfully terminated by the management of Nari Niketan by refusing of work. On 01.06.2020 the claimant-workman went to attend her normal duties but the work was refused to her by the management of Social Welfare Department / management No.2 on the pretext that the job of cook has been abolished, whereas the job of Cook is still available with the management. The claimant-workman was getting ₹ 20,063/- per month as DC rate of wages at the time of termination. The refusal of work, which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management M/s Jain Associates has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The claimant-workman was only paid a sum of ₹20,063/- online payment for the month of May 2020 by the management of M/s Jain Associates / management No.1. The management of M/s Jain Associates got the signatures of the claimant-workman fraudulently on a typed letter in English on the pretext for further appointment. The claimant-workman was not allowed to get the contents of the letters verified by some of her relatives as the claimant-workman has no knowledge of English language. For her reinstatement, the claimant-workman lodged a complaint with Labour Inspector, U.T. Chandigarh on 04.09.2020. The Labour inspector fixed a number of dates for amicable settlement but the management of M/s Jain Associates did not appear before the Labour Inspector on any date fixed for settlement. The action in terminating services of the claimant-workman by the management of M/s Jain Associates is illegal, wrongful, motivated, against the principles of natural justice and unjust and unfair labour practice. The claimant-workman served upon the management a demand notice dated 20.02.2021. The management neither replied nor took the claimant-workman back on duty. The Conciliation Officer, U.T. Chandigarh was requested for intervention. The conciliation officer intervened but no settlement could be made possible during the stipulated time. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and all attendant benefits. The claimant-workman remained unemployed during the period i.e. from the date of termination till date.

3. On notice, management No.1 filed written statement on 18.04.2022 wherein preliminary objections are taken on the grounds that the claimant-workman had served the incomplete statement of claim as the annexure / documents referred in it are not served by the claimant. Hence, the management reserve its right to amend written statement after receiving the complete claim statement, with the permission of the Court. The instant statement of claim is false, frivolous and devoid of any cause of action. The answering-management No.1 is one of the leading reputed firms in India. The management No.1 is well known man service provider in the manpower service industry. The contract of manpower supply of the management No.1 with management No.2 ended on 31.05.2020. Further that contract was awarded to another contractor M/s Shine & Sind Security Solutions Private Limited w.e.f. 01.06.2020. The claimant is guilty of mis-representations, mis-statements, concoctions and concealment of facts. The claim is devoid of merits. The claimant has deliberately failed and neglected to disclose true and correct facts and the claim statement contains mis-statement, false to the knowledge of the claimant. The claimant has not approached the Court with clean hands. The claim statement has been filed as an afterthought to commit mischief in order to make answering management succumb to the illegitimate demands of the claimant otherwise legally unsustainable. The claim statement has been filed only to harass, coerce, blackmail and pressurise the management. The claim statement is filed without any cause of action and is abuse of process of law. The claimant cannot take benefits of his own wrong.

4. Further on merits, it is specifically denied that the claimant has been appointed by the management No.1 on the basis of outsourcing in the establishment of management No. 2 as on

16.04.2016. It is agreed that the contract of manpower supply of management No.1 with management No. 2 ended on 31.05.2020 and further contract was awarded to another contractor i.e. M/s Shine & Sind Security Solutions Pvt. Ltd. w.e.f. 01.06.2020. The management No.1 had cleared all dues of the workman up to May 2020. It is denied that the management No.1 got the signatures of the claimant fraudulently on a typed letter in English. The claimant had / has knowledge of English language as she had also put her signatures on the claim statement in English language with efficient flow. After cross-examination of the claimant on that matter it may be concluded whether she had knowledge of English or not. The management No.2 attended the office of Labour Inspector on 10.11.2020 in the presence of the claimant and also explained the fact. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that statement of claim may be dismissed with heavy cost.

5. Management No.2 contested the claim statement by filing separate reply on 11.02.2022 wherein preliminary submissions / objections are raised on the ground that the present case is not maintainable against the answering management as neither the workman was engaged nor the services of the workman were terminated by the answering management. The workman did not implead M/s Shine & Sind Security Services Pvt. Ltd. as necessary party, which did not engage the workman. The workman was appointed by the management No.1 and was deployed at Nari Niketan, Sector 26, Chandigarh as unit run by Social Welfare Department, U.T. Chandigarh. On 16.09.2014 the contract was given to M/s A to Z Services for providing manpower and the contract was from 17.09.2014 to 15.04.2016. Thereafter, the contract was awarded to M/s Jain Associates from 16.04.2016 to 31.05.2020 for providing manpower. Thereafter, the contract was awarded to M/s Shine & Sind Security Solutions Pvt. Ltd. from 01.06.2020 to 10.11.2021 for providing manpower on outsource basis. On 01.06.2020 M/s Shine & Sind Security Solutions Pvt. Ltd. sent the list of employees and name of workman was not figured out in the list. Neither the workman was engaged by the answering management nor the services of the workman were terminated by the answering management, as such, there was no relationship of employer and employee exists between the answering management and the workman. The workman was engaged by the management No.1.

6. Further on merits, it is admitted to the extent that on 04.06.2015 the workman was deployed at Nari Niketan, Sector 26, Chandigarh as unit run by Social Welfare Department, U.T. Chandigarh by M/s A to Z Services. The contract of M/s A to Z Services was from 07.09.2014 to 15.04.2016. Thereafter, the contract was awarded to M/s Jain Associates from 16.04.2016 to 30.05.2020. Thereafter, the contract was awarded to M/s Shine & Sind Security Solutions Pvt. Ltd. from 01.06.2020 to 10.11.2021. However, it is wrong and denied that the services of the workman were terminated by the management No.2, rather the name of the workman was not recommended by the contractor M/s Shine & Sind Security Solution Pvt. Ltd. The contractor M/s Shine & Sind Security Solutions Pvt. Ltd. deployed the employees at Social Welfare Department, U.T. Chandigarh *vide* list dated 01.06.2020 but the name of the workman did not figure in that list. Further, similar stand is taken as taken in the preliminary submissions / objections. Rest of the averments of claim statement are denied as wrong except para 4 & 6 which are replied in a formal manner being matter of record. Prayer is made that the claim statement may be dismissed qua the answering management.

7. Rejoinder to the written statement of management No.1 and separate rejoinder to the written statement of management No.2 was filed wherein the contents of the written statements except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

8. From the pleadings of the parties, following issues were framed *vide* order dated 21.07.2022 :—

1. Whether the services of the workman are terminated illegally ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all attending benefits, as prayed for ? OPW

3. Whether the workman has no cause of action ? OPM (management No. 1 & 2)
4. Whether the application / statement of claim is false and frivolous to the knowledge of the workman ? OPM (management No.1 & 2)
5. Relief.

9. In evidence workman Sushila Devi examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 15.11.2022 the workman closed her evidence.

10. On the other hand, management No.1 examined MW1 Anil Kumar Jain - Proprietor of M/s Jain Associates, who tendered his affidavit Exhibit 'MW1/A' along with self-attested copy of employment terms & conditions with regard to workman Sushila vide Exhibit 'MW1/1'. It is pertinent to mention here that original of Exhibit 'MW1/1' was produced at the time of recording evidence which was seen and returned. On 17.04.2023 Learned Representative for management No.1 closed the evidence.

11. Management No.2 examined MW2 Deep Rana - Superintendent of Nari Niketan, who tendered her affidavit Exhibit 'MW2/A' along with attested copies of documents Exhibit 'M2/1' to Exhibit 'M2/25'.

Exhibit 'M2/1' is award of contract dated 16.09.2014 executed between management No.2 and management No.1.

Exhibit 'M2/2' is employee details dated Nil.

Exhibit 'M2/3' is joining letter dated 02.06.2015 of Smt. Sushila.

Exhibit 'M2/4' to Exhibit 'M2/7' is extension of contract letters dated 03.09.2015, 09.10.2015, 07.01.2016, 01.03.2016.

Exhibit 'M2/8' award of contract dated 11.04.2016 executed between management No.2 and management No.1.

Exhibit 'M2/9' to Exhibit 'M2/21' is extension of contract letters dated 28.02.2017, 10.04.2017, 12.04.2018, 26.03.2019, 27.06.2019, 13.08.2019, 29.11.2019, 03.01.2020, 28.02.2020, 26.03.2020, 28.03.2020, 30.04.2020 and 28.05.2020.

Exhibit 'M2/22' is letter of intent dated 19.05.2020 issued to the M/s Shine & Sind Security Solution.

Exhibit 'M2/23' is another letter dated 28.05.2020 addressed from Director Social Welfare to M/s Shine & Sind Security Solution.

Exhibit 'M2/24' is contract dated 23.05.2020 executed between management No.2 and M/s Shine & Sind Security Solutions.

Exhibit 'M2/25' is list of employees dated 01.06.2020.

12. In cross-examination of AW1 Sushila Devi conducted by Learned Law Officer on behalf of management No.2, the documents Exhibit 'M1' and Exhibit 'M2' were put to the witness. Exhibit 'M1' is copy of employees' details issued by A to Z Services. Exhibit 'M2' is copy of joining report dated 09.06.2015 of Sushila Devi. On 10.05.2023 Learned Law Officer closed the evidence on behalf of management No. 2.

13. I have heard the arguments of Learned Representatives for the workman and management No.1 and Learned Law Officer for management No.2 and perused the judicial file. My issue-wise finding are as below :—

Issue No.1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove both these issues is on the workman.

15. Under these issues workman Sushila Devi examined herself as her own witness as AW1 and *vide* her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

16. On the other hand, Learned Representative for management No.1 referred the testimony of MW1 Anil Kumar Jain, who *vide* his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement of management No. 1, which are again not reproduced here for the sake of brevity. MW1 supported his oral version with Exhibit 'MW1/1'.

17. Learned Law Officer for management No.2 referred the testimony of MW2 Deep Rana - Superintendent, Nari Niketan, who tendered her affidavit Exhibit 'MW2/A' deposing that the workman was appointed by respondent-management No.1 and was deployed at Nari Niketan, Sector 26, Chandigarh as unit run by the Social Welfare Department, U.T. Chandigarh. On 16.09.2014 the contract was given to M/s A to Z Services for providing manpower and the contract was from 17.09.2014 to 15.04.2016. Thereafter, the contract was awarded to M/s Jain Associates from 16.04.2016 to 31.05.2020 for providing manpower. She further deposed that thereafter contract was awarded to M/s Shine & Sind Security Solution Pvt. Ltd. from 01.06.2020 to 10.11.2021 for providing manpower on outsource basis and on 01.06.2020 M/s Shine & Sind Security Solutions Pvt. Ltd. sent the list of employees and the name of the workman was not figure out in the list. Neither the workman was engaged by the answering respondent-management nor the services were terminated by the answering respondent-management as there was no relationship of employer and employee exist between the workman and the answering respondent-management. She also deposed that no appointment letter was ever issued by the answering respondent-management. Hence, there is no relationship of employer and employee is existed between the workman and the answering respondent as the workman was engaged by the respondent-management No.1. MW2 supported her oral version with attested copies of documents Exhibit 'M2/1' to 'M2/24'.

18. From the oral as well as documentary evidence led by the parties it comes out that undisputedly on 04.06.2015 workman was appointed by the management of M/s A to Z Services as Cook and was deployed at Nari Niketan, Sector 26, Chandigarh, which is a unit run by management No.2 i.e. Social Welfare Department, U.T. Chandigarh. In this regard, the workman / AW1 in her cross-examination conducted by Learned Law Officer for management No.2 stated that she was engaged by M/s A to Z Services on 04.06.2015. She has seen copy of employee details issued by A to Z Services, which is Exhibit 'M1'. Copy of her joining report dated 09.06.2015 is Exhibit 'M2'. AW1 admitted as correct that the contract of management No.2 with M/s A to Z Services was for the period w.e.f. 17.09.2014 to 15.04.2016. The workman in the claim statement pleaded that the contract of A to Z Services were terminated on 31.03.2016 and the new management of M/s Jain Associates took over the contract of manpower supply on outsourcing w.e.f. 01.04.2016. This fact is not disputed by M/s Jain Associates i.e. management No.1. However, management No.1 has pleaded that the contract of M/s Jain Associates with Social Welfare Department ended on 31.05.2020. AW1 when put to cross-examination by Learned Law Officer denied for want of knowledge if M/s Jain Associates entered into contract with the management No.2 on 16.04.2016 till 31.05.2020. However, from Exhibit 'M2/8' it is duly proved on record that the contract to provide the manpower w.e.f. 16.04.2016 was awarded by the Social Welfare Department, Chandigarh Administration / management No.2 to M/s Jain Associates / management

No.1 *vide* letter Memo No.3740 dated 11.04.2016 and as per the accompanied service agreement dated 04.04.2016 the agreement between Social Welfare Department, Chandigarh Administration and M/s Jain Associates shall be effective for a maximum period of three years. From Exhibit 'M2/9' to Exhibit 'M2/20' it is further proved that the contract of Social Welfare Department, Chandigarh Administration with M/s Jain Associates was extended from time to time till 31.05.2020. From Exhibit 'M2/22' and Exhibit 'M2/23' it is proved on record that Social Welfare Department, Chandigarh Administration awarded further contract to M/s Shine & Sind Security Solutions Pvt. Ltd. w.e.f. 01.06.2020. As per version of workman / AW1, after the fresh contract was awarded to M/s Shine & Sind Security Solutions Pvt. Ltd. she deposited her documents with M/s Shine & Sind Security for continuation of her services. In this regard, AW1 in her cross-examination conducted by management No. 2 stated that she deposited her documents with M/s Shine & Sind Security for continuation of her services and she was told by the contractor that she will be informed after two days. From the aforesaid version of AW1, it cannot be believed that the workman was not aware of the fact that the previous contract of Social Welfare Department, Chandigarh Administration with M/s Jain Associates ended on 31.05.2020 and the new contract is awarded to M/s Shine & Sind Security Solutions w.e.f. 01.06.2020.

19. As far as the dues up to 31.05.2020 are concerned, AW1 in her cross-examination conducted by management No.1 stated that she worked till 30.05.2020. She was paid her last salary on 30.05.2020 by bank transaction. The salaries were paid every month as full & final salary of the concerned month. From the above said version of AW1 it is duly proved on record that M/s Jain Associates had already paid the due salary up to 30.05.2020 to the workman.

20. The grievance of the workman is that the new contractor M/s Shine & Sind Security Solutions Pvt. Ltd. has taken over the outsource employees of previous contractor M/s Jain Associates except her. The fact remained undisputed between the parties that M/s Shine & Sind Security Solutions Pvt. Ltd. had sent a list of contractual employees *vide* letter dated 01.06.2020 to the Director Social Welfare Woman & Child Development, Chandigarh mentioning therein the names of selected candidates for the post of Multi-Tasking Staff and that list contains the names of all the employees except workman previously outsourced by M/s Jain Associates. As far as management No.2 is concerned, the workman is not direct employee of management No. 2. The service conditions including salary of the workman were governed by management No.1 with whom the contract of management No.2 expired on 31.05.2020. The management No.1 is not competent to deploy the workman with the management No.2 beyond 31.05.2020 as the contract between them had expired on 31.05.2020. It is not the management No.2 which has either appointed or removed the workman from the service. Besides, there is no binding contract between the workman and management No.2. Learned Representative for the workman contended that during entire tenure of service of workman there was no complaint of any kind against her. The service period of the workman was about 4 years with management No.1 and after 31.05.2020 the workman was neither provided alternative job by management No.1 nor taken over by contractor Shine & Sind Security Solutions Pvt. Ltd., whose contract with management No.2 commenced from 01.06.2020. Thus, management No.1 is liable to pay retrenchment compensation to the workman. To support his contention Learned Representative for the workman referred cross-examination of MW1 wherein he stated that the contract of management No.1 with management No.2 was executed on 16.04.2016 which was effective from 16.04.2016. The said contract was up to 31.05.2020. During the entire tenure of service of the workman, there was no complaint of any kind against her. MW1 admitted as correct that at the time of termination, the service period of the workman was about 4 years with management No.1. MW1 admitted as correct that no retrenchment compensation was paid to the workman by the management No.1 at the time of her alleged termination. On the other hand, Learned Representative for management No.1 contended that all dues of the workman up to 31.05.2020 are clear and nothing is outstanding against the management No. 1. Besides, the management No.1 has not terminated the services of the workman but the contract of management No.1 with management No.2 had expired due to efflux of time on 31.05.2020. To my opinion, the contract between the management No.1 and management No.2 expired on 31.05.2020. After that date, the contract between management No.1 and management No.2 can no longer be enforced. Under these

circumstances, the non-renewal of service of the workman with the management No.1 after 31.05.2020 does not amount to termination. As far as alternative job is concerned, the workman has neither pleaded nor proved into evidence that management No.1 has valid contract with any other department or organisation. The workman has not put any suggestion relating to alternative job to MW1, who was witness of management No.1. In the absence of the same, management No.1 cannot be held liable to provide alternative job to the workman. The workman has not placed on record any document to show that M/s Shine & Sind Security Solutions Pvt. Ltd. has appointed any other person in her place so as to claim that she is replaced by another employee. Actual relief is sought against M/s Shine & Sind Security Solutions Pvt. Ltd., which has not been impleaded as a party. However, the sudden dismissal of the workman from service on account of expiry of contract, accompanied with the fact that the contractor / management No.1 did not offer any alternative job to the workman and the said workman was not taken into service by the subsequent contractor, the workman is entitled to some solatium. Therefore, the management No.1 is held liable to pay solatium in the sum of ₹ 40,000/- to the workman.

21. Accordingly, so far termination and consequential benefits arising out of termination are concerned both the issues, except solatium payable by the management No.1 to the workman, stands decided against the workman and in favour of the managements.

Issues No. 3 & 4 :

22. Onus to prove both these issues is on the management No.1 & 2.

23. Both these issues have not been pressed during course of arguments. Moreover, on being aggrieved from discontinuation from service after 31.05.2020, the workman was left with no other option than to seek remedy under the ID Act. Accordingly, both these issues are decided against the management No.1 & 2 and in favour of the workman.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is partly allowed qua management No.1 and declined qua management No.2. The management No.1 is held liable to pay solatium in the sum of ₹40,000/- to the workman. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 17.05.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Ashu, S/o Late Shri Roop Chand, R/o # 2651, Dadu Majra Colony, Sector 38 West, Chandigarh, have changed my name from Ashu to Ashu Kumar.

[838-1]

I, Suresh Manjhi, S/o Buna Odd, # 2096, Sector 15, Chandigarh, have changed my name to Suresh Odd.

[839-1]

I, Devender Kumar, S/o Jasbir Singh, # 332, Raipur Khurd, Chandigarh, have changed my name Devender Kumar to Chaudhary Davinder Singh.

[840-1]

I, Sonu *alias* Sonu Sharma, W/o Radheshyam Shastri, D/o Kamal Krishan, # 1246, GF, Sector 18-C, Chandigarh, have changed my name to Sonu Shastri.

[841-1]

I, Radheshyam Shastri, S/o Kana Ram, # 1246, GF, Sector 18-C, Chandigarh, have changed the name of my minor Son from Pratham to Prathm Narayan Sharma.

[842-1]

I, Romati Devi Gharti, W/o Mohd Rafi and D/o Amraj, R/o # 1165, Sector 44-B, Chandigarh, declare that I have changed my name after marriage from Romati Devi Gharti to Amreen Saifi and Let me be known by this name in future.

[843-1]

I, Vicky Mehra, S/o Satpal, R/o House No. 122, Phase-2, Ramdarbar, Chandigarh, have changed my name from Vicky Mehra to Vicky.

[844-1]

I, Jyoti Kumari, D/o Shiv Chandra Thakur, W/o Sumit Jha, R/o # 638, Sector 36-B, Chandigarh, have changed my name to Jyoti Jha.

[845-1]

I, Mohinder Kaur, W/o Anil Kumar Rajput, # House 3049, Tribune Colony, Sector 29-D, Chandigarh, have changed my name from Mohinder Kaur to Reena Rajput.

[846-1]

I, Omesh Kumar, S/o Revti, # 3326, Sector 19-D, Chandigarh, have changed my name to Umesh.

[847-1]

I, Puja Devi, W/o Umesh, # 3326, Sector 19-D, Chandigarh, have changed my name to Pooja.

[848-1]

I, Shamshad, W/o Niyaz Ahmad, R/o House No. 3997, Maloya Colony, Chandigarh, declare that I have changed my name from Shamshad to Nisha.

[849-1]

I, Rajni Verma, W/o Sunil Kumar, R/o House No. 309, Milk Colony, Dhanas, Chandigarh, have changed my name from Rajni Verma to Rajni.

[850-1]

I, Samar Narula, W/o Sh. Sahil Narula, # 3421, Sector 35-D, Chandigarh, That Samar Juneja and Samar Narula are one and the same person and known by both the names.

[851-1]

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